

## **Federal Decree-Law No. (31) of 2024**

### **On Netting**

We, Mohamed bin Zayed Al Nahyan, President of the United Arab Emirates,

Having reviewed the Constitution,

And Federal Law No. (1) of 1972 concerning the Competencies of Ministries and Powers of Ministers, and its amendments,

And Federal Law No. (4) of 2000 concerning the Emirates Securities and Commodities Authority and Market, and its amendments,

And Federal Law No. (8) of 2004 concerning Financial Free Zones,

And Federal Decree-Law No. (10) of 2018 on Netting,

And Federal Decree-Law No. (14) of 2018 regarding the Central Bank & Organisation of Financial Institutions and Activities, and its amendments,

And Federal Decree-Law No. (51) of 2023 promulgating the Financial Reorganisation and Bankruptcy Law,

And based on the proposal of the Minister of Finance, and the approval of the Cabinet,

We have issued the following Decree-Law:

### **Article (1)**

#### **Definitions**

For the purposes of this Decree-Law, the following words and phrases shall have the meanings assigned to each of them, unless the context otherwise requires:

**State:** The United Arab Emirates.

**Central Bank:** The Central Bank of the United Arab Emirates.

**Financial Free Zones:** The free zones subject to the provisions of Federal Law No. (8) of 2004 concerning Financial Free Zones, or any other law that replaces it.

**Qualified Financial Contracts:** The contracts stipulated in Article (5) of this Decree-Law.

**Cash:** Cash amounts credited to an account in any currency, or any other monetary claims for the repayment of money, including money market deposits.

**Netting Agreement:** An agreement between two or more persons, which provides for netting in accordance with any of the cases referred to in Article (4) of this Decree-Law.

**Multi-Branch Netting Agreement:** A netting agreement concluded between two or more persons, at least one of whom is a foreign party, under which any party thereto enters into qualified financial contracts through its head office in addition to one or more of its branches located in countries outside its domicile.

**Person:** A natural or legal person including, but not limited to, any company or corporation, or any international or regional organisation, bank, or international or regional development institution, whether established by an international agreement or otherwise, and also includes, but not limited to, any political subdivision, department, or entity owned by any political subdivision or department of a central or regional government.

**Insolvency and Bankruptcy Proceedings:** Any proceeding carried out in accordance with the provisions of laws relating to insolvency, bankruptcy, or liquidation, including compulsory liquidation procedures, reorganisation or composition with creditors, receivership, guardianship, or any other similar procedures in force in the State.

**Insolvent Person:** A person who is subject to insolvency and bankruptcy proceedings under the laws in force in the State.

**Liquidator:** The person who carries out or manages liquidation or receivership proceedings, or who is appointed to carry out such proceedings, or the trustee, guardian, or supervisor of such proceedings, or any other person or entity that manages the business of the insolvent person during insolvency and bankruptcy proceedings under the laws in force in the State.

**Collateral:** Anything provided to secure or enhance a right or obligation, and includes any of the following:

1. Cash in any currency.
2. Securities, including but not limited to, sukuk, commodities and

commodity contracts, and any rights or claims related thereto.

3. Guarantees, letters of credit, and obligations of reimbursement.

4. Any assets commonly used as collateral in the State.

**Collateral Arrangement:** Any mechanism or procedure relating to margin, variation margin, or any other collateral, security, or credit enhancement related to or forming part of a netting agreement or one or more qualified financial contracts entered into under such arrangements or to which a netting agreement applies, including the following:

1. Any pledge, mortgage, security interest, or any other lien on collateral, whether created by possession or otherwise.

2. Title transfer collateral arrangements.

3. Any obligation to provide collateral, a letter of credit, or reimbursement from any party to another party to a qualified financial contract related to any of such contracts.

**Title Transfer Collateral Arrangement:** Any mechanism or procedure relating to margin or any other security or insurance, related to a netting agreement or a qualified financial contract, based on the transfer of title to collateral, whether through outright transfer or on the basis of providing security, including a sale and repurchase agreement, a securities lending agreement, a securities purchase or resale agreement, or a security arrangement, the terms and conditions of which enable the collateral taker to dispose of the relevant collateral after it has been transferred to the collateral taker.

**Domicile:** The state in which a party to the netting agreement is established, registered, or organised.

**Head Office:** The place of business in the domicile of any party to a netting agreement.

**Foreign Party:** A party whose domicile is outside the State, and for the purposes of implementing the provisions of this Decree-Law, it includes parties located in the financial free zones in the State.

## **Article (2)**

### **Scope of Application of the Decree-Law**

1. The provisions of this Decree-Law shall apply to all netting agreements, qualified financial contracts, or collateral arrangements contained in this Decree-Law.
2. Financial Free Zones and the financial institutions licensed by them are excluded from the application of the provisions of this Decree-Law to the extent that there is legislation regulating the same situations provided for in this Decree-Law.

## **Article (3)**

### **Netting**

Netting shall be considered any of the following cases:

1. The termination, liquidation, or acceleration of any payment, obligation to deliver a right, or any obligation related to the performance, receipt, or demand for payment or satisfaction, which arises under a qualified financial contract entered into under a netting agreement, or which was subject to the provisions of a netting agreement.
2. A calculation, estimate, or determination, made in accordance with a termination or close-out valuation index, or in accordance with market value, liquidation value, replacement value, or any other relevant value, including the value of any damages that may arise from a breach by any party in concluding or performing any of the transactions to be concluded under the provisions of a netting agreement in accordance with the provisions of this Decree-Law with respect to any obligation, right, or group of obligations or rights that are terminated, liquidated, or accelerated, under Clause (1) of this Article.
3. The conversion of any of the values calculated or estimated under Clause (2) of this Article into a single currency.
4. The determination of a net balance of the values calculated in accordance with Clause (2) of this Article to be paid, or for which an obligation to pay may arise, and in accordance with the conversion

value stipulated in Clause (3) of this Article, whether this is done through a process of novation, substitution, or otherwise.

5. An obligation of one party to a netting agreement to pay, or to continue to pay, the net balance in accordance with Clause (2) of this Article, or as a result of its parties entering into a transaction under which the net balance becomes payable immediately or as part of the consideration for a specific asset or as a provision for the payment of damages related to the non-performance of that transaction.

## **Article (4)**

### **Netting Agreement**

1. An agreement is considered a netting agreement in any of the following cases:
  - a. If it is an agreement that results in netting related to present or future payments, or to the performance of obligations or rights, or the obligation or right to make, receive, or demand payment or satisfaction, which arises under or in connection with a qualified financial contract entered into between the parties to the agreement, or between those to whom this agreement applies.
  - b. If it is a master agreement, entered into between two parties, concerning the netting of an amount due under two or more netting agreements.
  - c. If it is a collateral arrangement, such as annexes or credit support documents, related to one or more of the agreements provided for in paragraphs (a) and (b) of this Article, or if it is considered part thereof.
  - d. If they are agreements or arrangements that comply with the provisions of Islamic Sharia, which have the same purposes as the netting agreements or arrangements provided for in paragraphs (a), (b), and (c) of this Article.
  - e. If it includes agreements, contracts, or transactions that fall within the scope of qualified financial contracts as provided for in Article (5) of this Decree-Law.
2. Any arrangement shall be deemed a collateral arrangement if it includes agreements, contracts, or transactions that fall within the scope of qualified financial contracts as provided for in Article (5) of

this Decree-Law, and the scope of netting cases as provided for in this Article.

3. Any netting agreement, and all qualified financial contracts to which such agreement applies, shall be deemed a single agreement.
4. A netting agreement includes a multi-branch netting agreement, and the provisions of the multi-branch netting agreement provided for in this Decree-Law shall apply to the branch of a foreign party in accordance with Article (16) of this Decree-Law.
5. If a netting agreement includes provisions relating to contracts, agreements, or other transactions other than qualified financial contracts, this agreement shall be considered a netting agreement only with respect to those contracts that fall within the definition of qualified financial contracts.

## **Article (5)**

### **Qualified Financial Contracts**

Subject to the provisions of Article (7) of this Decree-Law, qualified financial contracts shall be considered final and enforceable, and include, but are not limited to, any of the following contracts, transactions, or arrangements:

1. All types of swap contracts related to currency, interest rate, basis rate, or commodities.
2. Foreign exchange transactions and securities and commodities transactions, whether spot, future, forward, or otherwise.
3. A transaction based on a cap, floor, or collar option.
4. A forward rate agreement.
5. A forward currency or interest rate contract.
6. A currency or interest rate option.
7. Equity derivatives, such as an equity swap, an equity index swap, an equity forward, an equity option, or an equity index option.
8. A derivative related to bonds, other debt instruments, or sukuk, or a derivative related to a bond index, debt instrument index, or sukuk index, such as a total return swap, an index swap, a forward derivative, or an index option.
9. A credit derivative, such as a credit default swap, a credit default basket swap, a total return swap, or a credit default option.

10. An energy-related derivative, such as an electricity, oil, coal, or gas derivative.
11. A weather-related derivative, such as weather-based swaps or a weather option.
12. A data transmission derivative.
13. A shipping derivative.
14. An emissions derivative, such as emission allowance or emission reduction transactions.
15. An economic statistics derivative, such as inflation derivatives.
16. A real estate index derivative.
17. A securities contract, including a margin loan, and a purchase, sale, borrowing, or lending agreement for securities, such as a repurchase agreement, a reverse repurchase agreement for securities, securities lending, or purchase or resale of securities, including any contract or agreement related to a mortgage loan, rights related to mortgage loans, or mortgage-related securities.
18. A commodity-related contract, including agreements for the purchase, sale, borrowing, or lending of commodities, such as a commodity repurchase agreement, a reverse repurchase agreement for commodities, or the lending, purchase, or resale of commodities.
19. Collateral arrangements.
20. An agreement for clearing or settlement of securities transactions, or acting as a securities depository.
21. Any digital asset derivatives, agreements, contracts, or transactions of the types provided for in any of Clauses (1) to (20), and Clauses (22) to (25) of this Article.
22. Any voluntary carbon credit or other types of carbon credit derivatives, agreements, contracts, or transactions of the types provided for in any of Clauses (1) to (21), and Clauses (23) to (25) of this Article.
23. Any other agreement, contract, or transaction similar to any agreement, contract, or transaction as provided for in Clauses (1) to (22) of this Article, regarding one or more reference indices related to interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments, sukuk, precious metals, digital assets, voluntary carbon credits or other types of carbon credits, and quantitative measures related to the occurrence,

or probability of occurrence, of contingent events, associated with financial, commercial, or economic consequences, or financial or economic indicators, or measures of economic or financial risks or values.

24. Any swap, forward, option derivative, contract for difference, or other derivatives related to one or more agreements or contracts as provided for in Clauses (1) to (23), and Clause (25) of this Article.
25. Any contract, undertaking, or transaction entered into individually, or with other similar contracts, undertakings, or transactions, for the purpose of creating an economic effect equivalent to the economic effect of any of the types of contracts provided for in Clauses (1) to (24) of this Article, through the use of one or more Murabaha contracts, Musawama contracts, collateralised Murabaha master agreements, restricted and unrestricted agency contracts, profit rate swaps, foreign exchange rate swap alternatives, forward foreign exchange transaction alternatives, or any alternative hedging or investment instruments, Wa'ad, or other contracts, undertakings, or transactions used for the purpose of concluding instruments, agreements, or transactions compliant with the provisions of Islamic Sharia.
26. Any other financial agreement, financial contract, or financial transaction that the Central Bank decides to consider a qualified financial contract.

## **Article (6)**

### **Obligations Arising from Qualified Financial Contracts**

Qualified financial contracts, whether concluded, or becoming binding at a specific time, or within a specified period, and whether contingent upon the occurrence of any condition or possible event, shall give rise to one or more of the following obligations:

1. Payment of obligations due, or transfer of title to commodities or assets for consideration.
2. An undertaking to pay or an obligation to pay, or to transfer title to commodities or assets for consideration.

## **Article (7)**

### **Competencies of the Central Bank**

The Central Bank shall exercise the following competencies:

1. To determine any financial agreement, financial contract, or other financial transaction to be a qualified financial contract, in addition to the types listed in Article (5) of this Decree-Law.
2. To delete or add any financial agreement, financial contract, or financial transaction from the list of qualified financial contracts contained in Article (5) of this Decree-Law.
3. Any other competencies related to the provisions of this Decree-Law as determined by a Cabinet resolution.

The Central Bank, when exercising its competencies specified under this Article, shall coordinate with the Securities and Commodities Authority, and may consult with any other regulatory body at its discretion.

## **Article (8)**

### **Enforceability of Qualified Financial Contracts**

1. No qualified financial contract shall be considered void, or unenforceable, for any reason related to the provisions on uncertainty (Gharar) stipulated in any law, including those related to games, matches, gambling, betting, or lotteries.
2. If a person undertakes, upon entering into a qualified financial contract or any agreement related to such qualified financial contract, or one party undertakes to the other party of the qualified financial contract, that the qualified financial contract is compliant with Islamic Sharia, that person may not subsequently revoke, deny, disclaim, or refuse, in whole or in part, their obligations under the qualified financial contract, on the basis that the qualified financial contract is no longer compliant with Islamic Sharia, due to a change in the interpretation of any relevant rule or principle of Islamic Sharia for any other reason.

## **Article (9)**

### **Enforceability of Netting Agreements**

A netting agreement shall be considered final and enforceable in accordance with its terms, including what it imposes on the insolvent party, the guarantor, or any other person providing collateral for any of the parties to this agreement, even if that person becomes insolvent, and the enforcement of a netting agreement may not be suspended or stayed, nor may conditions be placed on its enforcement on the basis of any of the following:

1. The appointment or request for the appointment of a liquidator, or any action taken by the liquidator.
2. Any other provision contained in any law relating to insolvency and bankruptcy proceedings.
3. Any other provision contained in any law that may be applicable to the insolvent person.

## **Article (10)**

### **Enforceability of Netting upon Commencement of Insolvency and Bankruptcy Proceedings**

The obligations of any party to pay or perform shall be enforceable in accordance with the terms of the netting agreement, in the event of the commencement of insolvency and bankruptcy proceedings relating to a party to a netting agreement, under which the obligations of any party have been converted into net claims or obligations or have been netted, including any of the transactions provided for in Clause (5) of Article (3) of this Decree-Law, and the same provision shall apply to qualified financial contracts, and financial contracts and transactions subject to the netting agreement.

## **Article (11)**

### **Scope of the Liquidator's Powers**

1. The powers granted to the liquidator to perform, or refrain from performing certain contracts or obligations, or transactions or claims,

- shall not prevent the possibility of terminating, liquidating, accelerating, or converting to net claims, or net obligations all payments, or performance of obligations and rights, related to making payment or performing, in accordance with the provisions of one or more qualified financial contracts entered into under a netting agreement, or to which a netting agreement applies.
2. The liquidator's powers shall only apply to the net amount due relating to those qualified financial contracts, and in accordance with the terms contained therein.

## **Article (12)**

### **Limits on the Execution and Application of Netting Agreement Provisions in Cases of Insolvency and Bankruptcy**

1. The provisions of a netting agreement that include a method for determining the net balance of the close-out values of obligations on a net basis between the insolvent person and any other party shall be enforced in accordance with the terms contained in that agreement, and the same provision shall apply to the market value, liquidation value, and replacement value calculated with respect to the acceleration or termination of payment, or the performance of obligations or rights under one or more qualified financial contracts entered into under or related to a netting agreement.
2. The provisions of a netting agreement shall not be suspended, rescinded, or not enforced, or made conditional in any way, based on the provisions of applicable insolvency and bankruptcy laws that restrict the right to set-off obligations or rights or payment amounts or termination values due between the insolvent person and any other party, whether by novation, substitution, or on a net basis.

## **Article (13)**

### **Priority of Debts and Fraudulent Transfers**

1. The liquidator may not void, stay, or refrain from enforcing any of the following operations, on the basis that they constitute a preferential debt by an insolvent party:
  - a. Any payment, transfer, performance, substitution, or exchange of

cash, collateral, or any other interest, property, asset, or financial instrument, whether conventional or compliant with the provisions of Islamic Sharia, whether made under or in connection with a "netting agreement" by an insolvent party.

b. Any obligations incurred by an insolvent party under or in connection with a netting agreement, to pay, transfer, perform, substitute, or exchange cash, collateral, or any other interest or funds.

c. Any transaction carried out by an insolvent party in accordance with the terms of a netting agreement to implement the provisions of netting.

2. Notwithstanding the provisions of Clause (1) of this Article, the liquidator may void, stay, or refuse to enforce any of the operations contained therein, if there is clear and convincing evidence that the insolvent party carried out those operations with the intent to hinder, delay, or defraud any party to whom the insolvent party owes, or became indebted to, during or after the date of carrying out those operations.

## **Article (14)**

### **Prohibition on Restricting, Suspending, or Delaying the Enforcement of Netting Agreements**

The enforcement of a netting agreement that is enforceable in accordance with the provisions of Articles (9) and (10) of this Decree-Law shall not be restricted, suspended, or delayed, by virtue of a stay of execution or any other proceedings or orders.

## **Article (15)**

### **Sale and Liquidation of Collateral**

1. In title transfer collateral arrangements by outright transfer, the transfer of title to the relevant collateral shall be effective in accordance with the terms of the title transfer collateral arrangement, and such transfer shall not be described as creating a security arrangement.

2. The sale, acquisition, or liquidation of collateral, and the enforcement of any collateral arrangement, shall be carried out without sending any prior notice to or obtaining the consent of any party, person, or entity, in the following circumstances:
  - a. If there is no agreement between the parties to the contrary.
  - b. Subject to the applicable legislation in the State that requires the sale, acquisition, or liquidation of collateral to be carried out in a commercially reasonable manner.

## **Article (16)**

### **Enforceability of a Multi-Branch Netting Agreement in the Event of Insolvency of a Foreign Party's Branch**

1. With respect to a multi-branch netting agreement, the obligation of the insolvent foreign party, or the obligation of the liquidator of an insolvent foreign party, shall be calculated in accordance with the insolvency and bankruptcy proceedings in the State, from the date of termination of the qualified financial contracts to which the multi-branch netting agreement applies, and the right of the non-insolvent party to receive payments shall be limited in any of the following cases:
  - a. The obligation of the insolvent foreign party to pay the net amount due.
  - b. The obligation of the branch of the insolvent foreign party to pay the net amount due, whichever is less.
2. Any amount from the obligation mentioned in Clause (1) of this Article that has been paid to the non-insolvent party, or received by it in respect of the obligation of the insolvent foreign party to pay the net amount due under the multi-branch netting agreement, which, if added to the obligation of its liquidator, would exceed the obligation of the insolvent foreign party to pay the net amount due in accordance with the provisions of this Article, shall be deducted.
3. The obligation of the liquidator of the branch of the insolvent foreign party towards a non-insolvent party under a multi-branch netting agreement shall be reduced by deducting the fair market value of the collateral that secures or supports the obligations of the insolvent foreign party or the value of any proceeds of such collateral, which

has been enforced to satisfy the obligations of the insolvent foreign party towards the non-insolvent party in accordance with this agreement.

4. The right of the insolvent foreign party to payments shall be limited based on payments made in accordance with its insolvency and bankruptcy proceedings in other jurisdictions, as follows:
  - a. The obligation of the non-insolvent party shall be reduced by deducting any amount that has been paid to its liquidator or any liquidator or receiver of the insolvent foreign party in its domicile or in any other country, or received by them, in respect of the rights of the insolvent foreign party to the net amount due under the multi-branch netting agreement, which may exceed the rights of the insolvent foreign party to the net amount due if added to the obligation of the non-insolvent party in accordance with the provisions of this Article.
  - b. The obligation of the non-insolvent party towards the liquidator under a multi-branch netting agreement shall be reduced by deducting the fair market value of the collateral or the value of any proceeds of such collateral that secures or supports the obligations of the non-insolvent party, which has been enforced to satisfy the obligations of the non-insolvent party towards the insolvent foreign party in accordance with this multi-branch agreement.
5. A non-insolvent party to a multi-branch netting agreement, if it has a first-ranking lien on collateral, or any other right of ownership, mortgage, or other lien enforceable against other parties under that agreement, may retain such collateral in its entirety, and may, upon termination of that agreement, enforce against that collateral in accordance with the terms contained therein, to satisfy any claims secured by that collateral, provided that the total value enforced to pay such claims shall not in any case exceed the obligation of the insolvent foreign party to pay the net amount due, if any, and in such case, any excess value of the collateral must be returned.

## **Article (17)**

### **General Provisions**

1. The rights of the branch of a foreign party to the net amount due shall be equal to the amount owed by the non-insolvent party, if any, to a foreign party under a multi-branch netting agreement, after netting the qualified financial contracts concluded between the non-insolvent party and the branch of the foreign party in the State under that agreement.
2. The obligation of the branch of a foreign party to pay the net amount due shall be equal to the amount owed by a foreign party to the non-insolvent party, if any, under a multi-branch netting agreement after netting the qualified financial contracts concluded between the non-insolvent party and the branch of the foreign party in the State under that agreement.
3. The rights of the foreign party to the net amount due shall be equal to the total amount owed by the non-insolvent party, if any, to a foreign party, including what may arise from all its branches and affiliated institutions, and this shall apply after the commencement of the obligation to comply with the provisions contained in a multi-branch netting agreement regarding all qualified financial contracts that are subject to netting operations under that agreement, or on the total amounts that became a debt if the multi-branch netting agreement provides for the payment of any payments to any party in the event of termination of the qualified financial contracts entered into under that agreement.
4. The obligation of the foreign party to pay the net amount due shall be equal to the total amount owed by the foreign party, with all its branches and affiliated institutions, to a non-insolvent party after complying with the netting provisions contained in the multi-branch netting agreement with respect to all qualified financial contracts subject to the netting process under that agreement.

## **Article (18)**

### **Repeals and Priority of Application of the Provisions of this Decree-Law**

1. Any provision that violates or contradicts the provisions of this Decree-Law is hereby repealed, and Federal Decree-Law No. (10) of 2018 on Netting is also repealed.
2. The provisions of this Decree-Law shall have priority over any other law or provision that conflicts with them, and in the event that laws subsequent to this Decree-Law are issued, the provisions of this Decree-Law shall remain in force unless the subsequent law explicitly provides for the repeal of the provisions of this Decree-Law or a provision thereof.

## **Article (19)**

### **Publication and Entry into Force of the Decree-Law**

This Decree-Law shall be published in the Official Gazette and shall enter into force on January 2, 2025.

Mohamed bin Zayed Al Nahyan

President of the United Arab Emirates

Issued by us at the Presidential Palace - Abu Dhabi:

Dated: 28 / Rabi' al-Awwal / 1446 H

Corresponding to: 1 / October / 2024 G